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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,534	08/08/2001	Robert Noodelijk	CHRE:118	2112

7590 05/25/2005

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EXAMINER

GRUNBERG, ANNE MARIE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

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052005

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**Commissioner for Patents****Rule 105 Requirement for Information**

The claimed chrysanthemum plant 'Etna' is described in Plant Breeder's Right (PBR) application number NL PBR CHR 3164, published 16 November 1999 more than one year prior to the filing date of the instant application. The applicant has stated that the plant was on sale abroad on 12/1999, more than one year prior to filing in the United States. The UPOV-Rom publication is a form of public notice. Thus, the public was aware of the instant plant more than one-year prior to the filing date of this instant application.

Given this information, the application is a printed publication under the guidelines set forth in *In re Wyer*. See *In re Wyer*, 655 F.2d 221, 226, 210 USPQ 790, 794 (CCPA 1981). See also MPEP § 2128. The Plant Breeder's Right application is enabled because the disclosed cultivar could have been propagated from publicly available materials, and one skilled in the art would have the knowledge of how to do so, given the notoriety of various methods of asexual propagation.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. In *re Le Grice*, 301 F.2d 929, 133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain or reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Thomson*, 24 USPQ2d 1618, 1620 (Bd. Pat. App. & Inter. 1992) ("The issue is not whether the [claimed] cultivar Siokra was on public use or sale in the United States but, rather, whether 'Siokra' seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the cultivar Siokra disclosed in the cited publications.").

The publication cited above discloses the claimed variety and Applicant admits that the sale occurred more than one year prior to the U.S. filing date. However, a question remains as to the accessibility of the foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of the foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art. One of ordinary skill in the art would have known where to obtain the claimed plant by, for example by searching the Internet for the UPOV listed breeder "Chrysanthemum Breeders Association" one could have easily obtained the following contact information listed on the web site <http://www.cba-nv.nl/index.cfm?act=Contact.formulier>, CBA N.V., Rijshornstraat 205, Rijsenhout, P.O. Box 370, 1430 AJ Aalsmeer, The Netherlands, Telephone +31 (0)297 34 78 70, Fax +31 (0)297 34 46 12, [info@cba-nv.com](mailto:info@cba-nv.com). With that information, one of ordinary skill in the art could check the availability of the claimed plant and where to purchase that plant.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine the accessibility of the foreign sales and the reproducibility of the plants that were sold to the public, more than one year prior to the effective filing date of this application.

In response to this requirement please provide:

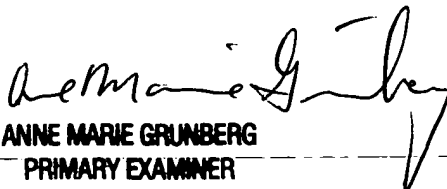
- a) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world if the sale, offer for sale, or public distribution occurred more than one year prior to the filing date of this application;
- b) any public information available regarding sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world that occurred more than one year prior to the filing date of this application, including the date(s) and location(s) as well as information pertaining to whether this was an obscure, solitary occurrence that would go unnoticed by those skilled in the art;
- c) any information relating to the accessibility or non-accessibility of the claimed plant that one of ordinary skill in the art could have derived from the printed PBR document;
- d) Applicant is also invited to submit any information that would indicate that one of ordinary skill in the art would not have known how to successfully reproduce the plant.

It is reasonable to expect that Applicant or the assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

  
ANNE MARIE GRUNBERG  
PRIMARY EXAMINER

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